Rancho de Los Arcos.[1]

Jocelyn Lippert

He is used to getting up early, but this morning it is all he can do to drag himself out of bed. He picks up the jeans and jacket he had laid out the night before. They bulge out in odd places because of the wads of money stitched into the seams: under his belt, in his collar, around the cuffs of his pants and shirt. He stuffs some more into the toes of his boots before putting them on. Twelve hundred dollars makes a lot of bills, even in American money.[2]

He usually eats a simple breakfast of milk and honey wafers, but this morning, March 3, 2001, his wife is up to cook him something substantial. She knows this will be his last meal for two days. His five children are subdued as they congregate in the kitchen. His son sits down at his place beside his father. Even though he is only 16 years old, he will be the head of the family for the next nine months, taking care of the 100 pigs on the family's farm, as well as working on a larger 10,000 hog farm nearby to earn extra money.

Diego Velez[3] has dark hair and blue eyes that crinkle up at the corners when he laughs. This morning, however, there is no laughter in the Velez house. Velez gets up from the table and bends down to say goodbye to his children. His daughter puts her arm around her daddy's neck and kisses him on the cheek. Velez takes his worn black sombrero off the hook by the door, leaving the leather one he saves for special occasions to await his return in nine long months.

The Crossing

Velez is leaving home to meet his *coyote*, the wily guide who will lead him across the mountains and desert to California. Velez has made this journey many times since he first crossed the border in January 1986. By now he knows the system. He knows he must eat a lot before he leaves because he will have to go without food or water for the next two days and nights. He knows he must rest before the trip because the walk is exhausting. He knows to tell the coyote that he has an aunt in California who will pay the $1200 for his fee so that the coyote won't think that he has cash on his person. And he knows he must sew the real money into the seams of his clothes to prevent robbers, other crossers, and the coyotes from stealing it along the way.

Unlike Velez, most Mexicans cross the border without knowing where they will work when they get to the United States. Many find jobs once they get to the US through family members or friends.

The owner of one organic farm in Southern California says she picked up her team of Mexican workers off the street. "They're not educated at all," she says. "They don't even have basic hygiene."[4]

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[1] On an organic farm in California, eight Mexican migrant workers make the best of a life that can be lonely, exhausting and unfair, growing food for the nation, but they are unable to gain legal status under its laws
The author of this article lived for two months in the summer of 2001 at XYZ, working with the Mexican laborers and living in a tent among their trailers. She would like to thank these men and their families for their generosity and friendship in teaching and sharing with her.

[2] Interviews with them for the article were conducted from June to July 2001 and in July 2004.

[3] Because much of the information in this article could legally endanger the farms and workers, certain names (indicated by *) have been changed.

[4] Interviews, conducted October 2001 to May 2002.

She calls her operation a "model farm." She says she treats her workers well and starts their wages at $7.00 an hour, 25 cents above California's minimum wage. All of her workers cross the border illegally. None of them have papers or authorization to work.

"They die crossing that border," she says. "Usually once [my workers] find me, they stay. I'm kind of like the pot at the end of the rainbow." And yet, she says, because they don't have housing, two of her seven workers are now living in bushes.

One Farm's Seemingly Perfect Recipe

Diego Velez is one of the luckier ones this time around. He has a job and a room waiting for him in California, at an organic farm called XYZ Organics*.

XYZ Organics farm uses only natural methods of pesticide and weed control. The farm workers spray garlic and fish mixtures on the plants to deter insects, and pull out the weeds by hand. The crops, which range from tomatoes to peaches to asparagus to carrots, are planted in alternating rows to discourage bugs, which tend to thrive in industrial mono-cropping farms. XYZ limits its use of gasoline-powered machinery because of the air pollution caused by burning fuel. The farm takes pride in what it views as a moral commitment to chemical-free, sustainable farming. It sells its produce at nearby farmers' markets and from a roadside stand on the property, as well as to restaurants around California. The owners of these restaurants express their gratitude for the quality and flavor of the fruits and vegetables with glowing praise and free meals for the farm managers.

XYZ's Secret Ingredient

XYZ Organics employs eight Mexican field workers. Each man has a resident alien card. Three of the cards are authentic. Five are not. The false cards cost anywhere from $40 to $100 to purchase, about the same price college students pay for fake IDs they use to get into clubs or to buy liquor. Velez and the other four unauthorized workers have fake social security cards as well, with fake social security numbers.

Jim McCann*, the farm's personnel manager, checks the workers' cards and papers each year, as required by law. [5] "But," says the farm's long-time manager, Peter Collins*, "we know or sense that there are a few of our crew members where documentation is not real or has been purchased." [6]

Collins says there is a false perception that, unlike conventional farms, organic farms don't hire illegal Mexican migrants.

"In the organic movement," Collins says, "it's a dirty little secret."

But Sam Hammond*, XYZ's current market manager, says the secrecy extends well beyond the borders of organic farming. [7]

"[Labor] is a taboo topic," Hammond says. "It's like the unspoken issue in farming that no one wants to talk about."

The National Agricultural Workers Survey is the most comprehensive survey on matters of migrant farm labor. The most recent NAWS, published in 2000, reported that 52 percent of

[5] Interviews, conducted June-July 2001.
[6] Interviews, conducted October-December 2001.
[7] Interviews, conducted June 2001 to May 2002.

farm workers interviewed nationwide were unauthorized, or "illegal."[8] Howard Rosenberg, a specialist in agricultural labor issues at the University of California at Berkeley, says the number has only continued to increase since that time. [9] Rosenberg says the hiring of ineligible farm workers was once thought limited to border states, but that in the past 10-15 years the phenomenon has been evident throughout the nation. "We used to think this was a little secret in places like California and Texas," Rosenberg says. "But the national survey showed that we exceeded 50 percent ineligible in the farm workforce all around the country."

Feeding A Nation

Americans enjoy some of the cheapest food in the world, due in part to the inexpensive labor Mexican workers provide. Mexican-born workers, both legal and undocumented, made up 91 percent of the California agricultural work force, and 77 percent of all US agricultural workers, according to the 2000 NAWS and the Department of Labor.[10] "The cost of food is a reflection of how much can be paid to the workers," says Sam Hammond from XYZ Organics.

Jocelyn Sherman, a spokeswoman for the United Farm Workers union, says the agricultural system in the US is just plain unfair.[11] "These [workers] are the people who put food on our table," Sherman says, "and many cannot feed their own children."

In a report entitled "Living at the Edge: Mexican Origin Farm Workers in Rural California," Don Villarejo, Ph.D., writes, "Foreign-born workers are now recognized to be the secret ingredient of one of the most perplexing puzzles of the unprecedented US economic boom of the last decade." [12]

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It is 5:00 A.M. on Monday, May 30, 2001. The fog that rolls in from the Pacific Ocean at night still hangs over the fields in the pre-dawn haze. Pedro Montano* comes out of his trailer room to put on his shoes. Montano, a jolly man from Oaxaca with a jovial laugh and a thick salt and pepper mustache, is one of the five undocumented men on the XYZ crew. He has been working on farms in California for over 20 years, returning to Mexico every year or two and making the trek back over the mountains with a coyote in the springtime.

Slowly the other workers emerge from their trailers. On Mondays and Thursdays, the men get up before dawn to begin harvesting string beans. They head to the field, quiet in the pre-dawn stillness and still sleepy until the sun climbs into the eastern sky. They each take a row in the front field of the farm, or "rancho." For the next four hours their bodies bend over the knee-high plants in human arches – "arcos," they call themselves – as they pick the beans, and place each handful in their white plastic buckets. They joke that the farm should be called not XYZ, but "Rancho de Los Arcos."

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[8] Findings from the National Agricultural Workers Survey (NAWS): A Demographic and Employment Profile of United States Farmworkers. US Department of Labor, Office of the Assistant Secretary for Policy, Office of Program Economics, Research Report No. 8. March 2000.
[9] Interviews, Howard R. Rosenburg, conducted November 2001 - October 2004.
[10] National Agricultural Workers Survey (NAWS), March 2000.
[11] Interviews, Jocelyn Sherman, conducted October-December 2001.
[12] Don Villarejo, "Living at the Edge: Mexican Origin Fram Workers in Rural California," *Migration Dialogue.* http://migration.ucdavis.edu/cf/more.php?id=36_0_2_0 (accessed October 24, 2004).

Living on the Farm

Eight Mexican men, two women, and three children live at XYZ in the cluster of trailers between the avocado orchard and the asparagus fields.

The kitchen trailer in the workers' quarters is used by five of the men. The men at XYZ each pay the farm $80 a month for utilities in the trailers. There is no bathroom. All thirteen people share one outhouse near the road at the other end of the farm. The outhouse is cleaned once a week. A bathhouse, which was begun last year, is still under construction. [13] There is no heat in any of the structures, despite the fact that winter temperatures can drop to the low forties.

Wages at XYZ start at California's minimum wage of $6.75, which was raised from $6.25 in California in January 2002. Working 50-hour weeks for nine months of the year at minimum wage, the men at XYZ would make about $12,150 a year. Velez wires $300 a month back to his family in Mexico. The other men whose wives and families live in Mexico do the same. Taxes and social security are deducted from the wages pre-paycheck. Because their numbers are false, those who are unauthorized will probably never receive their social security benefits.

The Farmer's Dilemma

Collins says he feels that farmers like himself are caught in a vise. He says he cares about his workers and wants to make their experience working on his farm as positive as possible. He believes the Mexican migrants who work on farms in California and around the country should be treated as members of the community who are doing valuable work. But, he says, it is often a struggle to make ends meet at the farm.

"That place survives on a miracle every month. You try to make the situation as good as you can within the constraints of the resources you have."

Collins says that as far as he is concerned, it is impossible to get his workers legal papers. "Essentially, as a nation we guard the borders to keep out the very people whose hands grow our food."

Sam Hammond, XYZ's marketing manager, says he feels that in both the environmental and labor aspects of the farm, XYZ makes compromises.

"Like many other farms, we are operating on a shoestring, and it's pretty tricky to pull it off and pay people a living wage." He adds that farms like XYZ struggle to compete with larger agri-business operations. "In terms of why XYZ hasn't made leaps and bounds in terms of labor issues, it comes down to the fact that we're competing with farms that aren't making any leaps or bounds."

The Shortfall of Immigration Law

Nancy Kennedy, an immigration lawyer in Seattle, says that after working in other areas of law, she was shocked by the disorganization and haphazard nature of immigration law.[14] "There are a lot of areas of immigration law that aren't covered by regulations, so to fill the void, people look to informal memos that people at the INS write," Kennedy said. The federal government is responsible for legislating on most issues pertaining to immigration. Once passed, most laws are regulated by what was previously the Immigration and Naturalization Service (INS) -- now the Bureau of Customs and Immigration Enforcement and the Bureau of

[13] The construction of the bathhouse was completed in 2004 after the decade-long lack of facilities.
[14] Interviews, Nancy Kennedy, conducted October-December 2001.

Citizenship and Immigration Services, both within the Department of Homeland Security. Thomas Schiltgen, Director of the former Los Angeles INS District Office, now also under the jurisdiction of the Department of Homeland Security, says, "It's our job to implement the laws of the US and it's the job of Congress to enact those laws."

But the newly christened USCIS does not have the resources to enforce the current laws by deporting the illegal immigrants currently living in the US Data on immigration are elusive, partly due to the nature of the population they represent. But the most recent comprehensive report on immigration data, released by the USCIS in 2003 and based on the 2000 US census, estimates that there were 7 million undocumented migrants living in the US in 2000.[15] Russ Bergeron, a spokesman at the national headquarters of what was previously the INS says his agency had fewer than 2000 agents to conduct non-border-patrol investigations in 2001.[16] "[There] is a huge disparity between undocumented people and the number of enforcement officers." In 2000, the INS deported about 175,000 people, or 2 percent of the total number of illegal aliens at that time.

American farms need the Mexican workers, but Bergeron says there is no procedure for legally hiring temporary farm workers. "There is no mechanism. Actually, that's not correct. There is a current mechanism whereby agricultural business and industry can bring in foreign workers. It's a visa category known as H2A."

The H2A visa is jointly regulated by the US Department of Labor (DOL), the Department of State and United States Citizenship and Immigration Services. The employer is responsible for applying for the H2A visas by first attempting to recruit labor through the interstate posting system coordinated by DOL and then submitting proof that he has adequately attempted to procure employees from the local labor pool. If after these steps the DOL certifies that US resident labor is not sufficiently available, the employer then submits the certification with an H2A application to the Department of State and United States Citizenship and Immigration Services.

The advantages of the H2A system are that it addresses the specific needs of farmers for seasonal labor and, if granted, enables the workers to cross the border with valid paperwork so they do not have to pay the $1200 to $2000 fee to the coyote and make the dangerous trip through the desert on foot. The disadvantage of the system is that the current process is so long and arduous that few farmers want to take the trouble to do it.

"My own personal opinion is that it is much easier to hire illegals than to get the paper work done," says McCann, the personnel manager at XYZ Organics.

Judging from the statistics, this sentiment is shared by the vast majority of farmers. Only 4 percent of all agricultural workers nationwide had work authorization distinct from permanent resident status or citizenship in 1999.[17] On January 28, 2004, Stuart Anderson, Executive Director of the National Foundation for American Policy appeared before the House Agriculture Committee in a hearing to review the potential effect of recent temporary guest worker program

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[15] US Citizenship and Immigration Services, Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000 (January 2003). http://uscis.gov/graphics/shared/aboutus/statistics/Illegals.htm (accessed October 20, 2004.)

[16] Interviews, Russ Bergeron, conducted October-December 2001.

[17] 2 % have H2a according to the *INS statistical yearbook* (32,375 in 1999) and 2 % have other work authorization according to the 2000 NAWS. In fiscal year 2003, only 30,000 H2A visas were granted nationwide.

proposals on the agricultural sector.[18] He testified that the heavy regulatory burden the H2A program put on employers was one of the main hindrances to its efficacy.[19]

Jack Schaffer* of Schaffer Organic Vegetables* used to hire Americans, whom he describes as "athletic, hippy workers," in apprentice-type positions.[20] Then one year, he tried hiring Mexicans, and he says he realized how much better they fit his needs.

"[The Mexicans] want to work long hours, instead of now and then," Schaffer says. "It was much better from a business standpoint to hire people who wanted all the hours I could give them."

Schaffer's situation highlights another problem with the H2A system. Despite provisions which attempt to address this issue, the labor certification process doesn't adequately take into account that the farmers would often rather hire Mexicans than Americans, either because they would have to pay Americans more or because Mexicans are simply better workers.[21]

In addition, Norma Negrete, an immigration consultant who advised workers at XYZ Organics last year, says most Americans simply don't want to do farm work.[22]

"If you drive along the highways past Ojai and Ventura, you don't see any white people [in the fields]," Negrete says. "We need foreign workers, especially in California, because nobody here wants to do those jobs."

Changing the Law

There are half a dozen bills pending in Congress aimed at reforming laws concerning the legal status of current and prospective agricultural workers. The most comprehensive are Senate bill S. 3142 and its companion bill in the House, H.R.1645, known together as AgJOBS – The Agricultural Job, Opportunity, Benefits, and Security Act of 2003. These bills would provide many currently illegal farm workers with the opportunity to obtain legal temporary resident status, and would revise the current H2A system. The bills were introduced by Senators Edward Kennedy (D.-Mass.) and Larry Craig (R.-Idaho), and by Representatives Howard Berman (D.-Calif.) and Chris Cannon (R.-Utah) after years of difficult negotiations among themselves, other legislators, and a plethora of groups with interests in immigration law reform. Versions of the current bill had been introduced in the 107th Congress (2001-2002), but each was stymied before passage.

The Farmworker Justice Fund (FJF), a non-profit organization that works to improve the working and living conditions of migrant laborers, supported the companion Kennedy/Berman bills over the Craig bill in the 107th Congress because the requirements for gaining amnesty and conversion to permanent resident status are more moderate in the Kennedy/Berman bills. The UFW also supported the Kennedy/Berman bill. "If these people are over here and they're

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[18] *California Capitol Hill Bulletin*, Volume 11, Bulletin 3, (Washington, DC: California Institute for Federal Policy Research, January 29, 2004).

[19] *Ibid.*

[20] Interviews, conducted October-December 2001.

[21] The H2A provisions require employers to pay migrant workers for whom they gain H2A visas the "Adverse Effect Wage Rate," which is a calculation of the local prevailing wage and is almost always significantly higher than the local minimum wage. The purpose of these provisions is to prevent employers from offering a wage lower than the prevailing wage, and then arguing that they couldn't find an adequate local work force. The effect is that even employers who pay undocumented workers minimum wage (some pay less since undocumented workers are harder for the government to regulate) are more likely to want to hire undocumented workers because they can pay them minimum wage, rather than the higher Adverse Effect Wage Rate as they would if they applied for an H2A visa for them.

[22] Interviews, Norma Negrete, conducted October-December 2001.

picking our food," Sherman of the UFW says, "they should have the opportunity to become citizens." In 2001, only 7 percent of agricultural workers in California and 22 percent nationwide were US citizens. Sarah Berk, a spokeswoman for Senator Craig, said at the time that Senator Craig included stringent requirements for citizenship because he does not believe citizenship should not be given away indiscriminately.[23] Growers' associations and immigrant rights groups were sharply divided over these and other differences between these two and other bills in the 107th congress. The AgJOBS bill is touted as an unprecedented compromise between the opposing factions.

The AGJOBS bill is made up of two primary components: (1) a two-step legalization, or "earned adjustment," program under which undocumented farmworkers who have been performing work in agriculture in the United States may gain temporary resident immigration status and then earn permanent resident immigration status upon completing additional employment in US agriculture during the next three to six years; (2) Revision of the H-2A guestworker program, which will continue to allow agricultural employers to employ foreign workers on temporary nonimmigrant visas based on conditions of labor shortage.[24]

The bill would adjust the current H2A regulations in a few significant ways. At the behest of both growers and workers, AgJOBS would streamline the application and approval process for growers wishing to hire H-2A workers. As a concession to the growers, the regulations requiring employers to provide housing to H-2A workers would be relaxed. Under the new regulations, employers would have the option of providing workers with a housing stipend rather than the physical housing that the current H-2A provisions require. Workers won the stipulation in AgJOBS that employers would continue to pay at least the highest of the minimum wage, the prevailing wage, or the Adverse Effect Wage Rate.[25] The AEWR for California in 2002 was $8.02, $1.27 more per hour than the current minimum wage starting pay at XYZ Farms. But growers won the concession that for the next three years, the AEWR would be frozen at the January 2003 levels, not to be recalibrated again until 2006.[26] Last, and perhaps most significant from the point of view of workers, guest laborers would for the first time have the right to go to federal court to enforce their rights under the H-2A program.

In a letter sent to all the members of Congress and signed by the United Farm Workers Union, and over 400 churches, non-profits, and rights groups, the FJF wrote, "A growing number of our leaders in Congress, as well as the President, recognize that our nation's immigration policy is flawed and that, from virtually every perspective, the status quo is untenable. Nowhere is the status quo more untenable than in agriculture… AgJOBS represents the coming together of historic adversaries in a rare opportunity to achieve reforms."

Alongside the AgJOBS bill are other pieces of legislation that more closely represent the growers' preferences and leave out many of the provisions that workers' groups support. One bill imposes a limitation on the wage that the Secretary of Labor may require an employer to pay an alien H2A worker.[27] Another bill simplifies the H2A process, but does not contain a

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[23] Interviews, Sarah Berk, conducted October-December 2001.

[24] Bruce Goldstein, "Summary of the Agricultural Job Opportunity, Benefits, and Security Act of 2003 ("AgJOBS")," *Farmworker Justice Fund, Inc.* http://www.crlaf.org (accessed October 20, 2004.)

[25] See footnote above discussing the Adverse Effect Wage.

[26] United Farm Workers of America, *AFL-CIO brief*. http://www.fwjustice.org/compromise.htm (accessed October 20, 2004.)

[27] H.R.1606: To amend the Immigration and Nationality Act to impose a limitation on the wage that the Secretary of Labor may require an employer to pay an alien who is an H-2A nonimmigrant agricultural worker. http://thomas.loc.gov/cgi-bin/bdquery/D?d108:9:./temp/~bdxFaV::/ (accessed October 28, 2004).

provision for legalization of workers.[28] Another bill, perhaps the most contested, does not allow undocumented workers to gain a temporary immigrant status as AgJOBS does, but instead expands the current H2A system into a comprehensive guest worker program.[29] This is the route that President Bush currently supports.

The FJF wrote in a statement that it opposes "guest worker policies" on the grounds that "the model for this country is, and should be, immigration, not a system of indentured servitude." Rosenberg, of UC Berkeley, says that for many people in the farming community, guest worker programs like the current H2A system seem like the modern equivalent of the Bracero program. The Bracero Program, which Rosenberg says is to many people the symbol of all that is wrong with the farm labor system, was instituted in 1942 to bring Mexicans to work in the US in order to ease a labor shortage during and after World War II. "Although the program included rules to uphold labor standards, regulate Bracero employment, and make it a fair deal for workers," Rosenberg says, "there were many reports of the rules being broken and employers mistreating workers."[30]

The FJF wrote in an earlier letter concerning farmworker immigration reform, "Our democratic traditions demand that when we as a nation benefit from the labor of workers, those workers be given an opportunity to enjoy the political freedoms on which this country was founded."[31]

On the Rocky Road to Citizenship

Emilio Diaz* was nervous the day of his citizenship test. Diaz, the farm's foreman, lives in one of the trailers with his wife Alicia* and their two sons, Victor* and Emilio*, ages 3 years and 6 months. Diaz is a soft-spoken man with crooked front teeth and a deep laugh. For weeks he had been studying the questions about United States history and English grammar in Eve P. Steinberg's *The Complete Guide to Becoming a US Citizen* that his brother Antonio Diaz* had checked out from the public library.[32] But he was still unsure about his preparation for the test. He had heard that it was difficult, that many Americans wouldn't be able to pass it if they had to take it.

Diaz put on his Sunday clothes in the chill of the foggy morning, a button-up shirt his wife Alicia had pressed for him, ink black jeans, and clean leather boots. He had been granted the day off to drive to Los Angeles for his test, but he came to the morning meeting before he left.

There was a hushed expectancy among the men as they gathered around the time clock shed for the 6:50 meeting that morning, as if the other seven could feel the knots in Diaz's stomach. On most mornings, the men were anxious to finish the meeting quickly so they could punch in their time cards as early as possible. But today, the men remained standing in a small cluster around their foreman, shifting their weight from one foot to another, each seeming to be

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[28] H.R.3604: To simplify the process for admitting temporary alien agricultural workers under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, to increase access to such workers, and for other purposes. http://thomas.loc.gov/cgi-bin/bdquery/D?d108:9:./temp/~bdPcCG::/ (accessed October 28, 2004).

[29] S. 1461 and H.R. 2899: To establish two new categories of nonimmigrant workers, and for other purposes. http://thomas.loc.gov/cgi-bin/bdquery/D?d101:4:./temp/~bdR2nu::/ (accessed October 28, 2004).

[31] Available at http://www.fwjustice.org/gw201letter.htm (accessed October 20, 2004).

[32] Eve P. Steinberg, *The Complete Guide to Becoming a US Citizen* (New York: Pearson Prentice Hall, 1994).

awaiting direction from one of his companions. Finally, Montano stepped forward. He patted Diaz awkwardly on the shoulder.

"Buena suerte," he said.

"Buena suerte, buena suerte," the others echoed, giving similar pats and embraces. Good luck, good luck. Good luck.

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One month later, Diaz received a letter informing him that he had passed the test and was now a citizen of the United States. The men celebrated with a round of "cervezas" that night. The beer bottles clinked under the noise of music and laughter.

At Whose Expense?

California agriculture brought in $27 billion in revenue in 2000. If California were an independent nation, it would be the world's sixth largest economic power.[33] Yet many of the men and women who work on California farms toil for minimum wage—and sometimes less. Dean Fryer of the Division of Labor Standards Enforcement in California says as far as his office is concerned, it doesn't matter if a worker is documented or not.[34] "If you work here, you've got to get paid according to the law," Fryer said. "It doesn't matter where you're from, what papers you've got." But, Fryer says, a lot of workers are being paid less than the $6.75 required by California state law.[35]

In addition, agricultural workers are exempt from the federal law requiring overtime pay after 8 hours of work in a day or 40 hours a week. In California, field workers are allowed to work 10 hours a day and 60 hours a week before being paid for overtime.

The Blow of 187

In 1994, Californians voted to enact Proposition 187, a plan that would deny illegal immigrants the right to publicly funded health care, public education, and public social services. Proposition 187 authorized schools, hospitals, and law enforcement officials to request identification from anyone "suspected of being present in the United States in violation of federal immigration laws."[36] Most of the law's provisions were later overturned in court,[37] but the bill indicates the resentment many Californians feel toward the migrants in their midst.

Emilio Diaz has two sons. His eldest, Victor, has a round face with big curious brown eyes. On Sundays, Diaz bathes Victor from a bucket of soapy water on the steps leading up to the family's trailer. Victor and Daniel*, Diaz's two year-old nephew, play together on the farm.

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[33] Legislative Analyst's Office, Calfornia's Non-partisan Fiscal and Policy Advisor. *2000 Cal Facts: California's Economy and Budget in Perspective*, Part 1, (December 2000), http://www.lao.ca.gov/2000/calfacts/2000_calfacts_economy_part1.html (accessed October 20, 2004).

[34] Interviews, conducted October-December 2001.

[35] Available at http://www.dol.gov/esa/minwage/america.htm#California. (accessed October 20, 2004).

[36] Proposition 187 text. Online at http://documents.fablis.com/index.php/California_Proposition_187_(1994). (accessed October 15, 2004).

[37] The day after the proposition had been passed, the League of United Latin American Citizens filed a suit contesting all provisions of the initiative as unconstitutional. Federal District Court Judge Mariana Pfaelzer ruled in 1995 and 1997 that parts of the proposition were unconstitutional and that only the federal government had the power to set immigration law. After years of court battles, a court-approved mediation settlement was reached in July 1999, nullifying all but a few minor provisions of the law. *See* League of United Latin American Citizens v. Wilson, 997 F.Supp. 1244 (C.D.Cal. 1997) and League of United Latin American Citizens v. Wilson, 908 F.Supp. 755 (C.D.Cal. 1995).

Their favorite game involves running up and down the long wooden table in the center of the trailer circle, giggling and banging on the table with sticks or hands. Victor and Daniel will imitate anything. They repeat the words their parents say, nod their heads when their uncles do. Victor once even started barking in imitation of the dog next door. In a couple of years, Victor and Daniel will be old enough to start kindergarten and channel their learning into academic subjects.

Under the terms of Proposition 187, Victor and Daniel would have been required to show evidence of their fathers' legal resident status if a teacher or administrator requested documentation. If school officials found out that Daniel's father's papers were false, Daniel would not have been allowed to enroll.

In a Citizens for Justice online forum, Susan Harris wrote in support of Proposition 187, "What some people absolutely refuse to comprehend is that 'illegal' means that these people broke our laws. They have no rights to free services in this country whether it is medical care, schooling, driving licenses, social security, jobs or anything else."[38] When the proposition came on the ballot on November 8, 1994, 59 percent of Californians agreed with the sentiment and voted it into law.

Collins says the successful passage of Proposition 187 is a tangible display of the kind of resentment the Mexican workers at XYZ face every day. "I hear stories about [the workers] walking in town, and people calling names," Collins says. He adds that Americans seem blind to the fact that they owe the availability of cheap and plentiful food to these laborers.

At the Border

According to Bergeron, the spokesman for the former INS, the US border patrol apprehended 1.2 million people trying to cross the US-Mexican border illegally in 2000. Some people are counted more than once because they make multiple attempts, Bergeron said.

Many Mexican women who come into the US choose to pay an extra $800 for a fake passport to cross at the official border patrol check-point because crossing the border with a coyote is just too dangerous for them. Jack Schaffer, the owner of Schaffer Organic Vegetables in Northern California, says the wife of one of his workers made the trip across the border with her brother. "It was a terrifying experience for her," Schaffer recalls. "Not just in terms of problems with the law, but problems with men trying to sexually advance on her because they thought she was alone."

Go Organic

Antonio Diaz, Pedro Diaz's uncle and one of Emilio Diaz's two brothers at XYZ, sits outside at the long picnic table under the eucalyptus trees in the center of the trailer circle. He has just come back from his weekly English lesson with Laura Harris*, the farm stand manager, and is feeling good. Antonio Diaz is a good-natured man with a shining smile who makes friends easily and with grace. He writes poetry and spends many evenings at the public library reading books in English to improve his language skills in preparation for the citizenship test he hopes to take some day soon.

Diaz takes out a copy of the "Sweet Honey in the Rock" song lyrics Harris gave him to practice reading them out loud. A mosquito lands on his forehead. Then another.

"We should spray," Diaz says as a joke, his eyes crinkling into a smile.

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[38] Available at http://citizensforjustice.org/gray/prop187.html (accessed October 20, 2004).

"They do that in New York," one of the summer interns sitting across the table from his at the table says in Spanish. "Spray to get rid of the bugs."

"But you can't do that here," Diaz responds in Spanish, still smiling. "Oh, no." Then, breaking into English, he echoes the phrase painted in large orange letters against a green background on the roadside stand, "Everything is organic!"

The men at XYZ are glad to be working at an organic farm. They take pride in their farm's ecologically friendly practices, but more important, they appreciate the absence of health problems many of them have experienced while working on conventional farms. Pedro Montano, the jovial man from Oaxaca, worked for years at a California grape vineyard. He describes the pains he would have in his stomach and chest after inhaling the pesticides and herbicides the workers had to spread on the vines. Emilio Diaz says he once got so sick from the poisons he had to take several days off to recuperate.

The Union Way

Some farm workers have been trying to improve their wages and working conditions by joining a union. Jocelyn Sherman, from the United Farm Workers union (UFW), says there are currently 27,000 farm workers who work under UFW contracts. The UFW sends representatives to farms around the country to inform workers about joining the union. In California, if 50 percent of the workers on a given farm sign a petition for elections, the state Agricultural Labor Relations Board arranges for and conducts an election. If 50 percent of the workers then elect to join the union, the UFW begins working with the employer to reach an agreement.

Sherman says it is the responsibility of the employer to check the documentation of the workers, and that immigrant status is not taken into account in the elections. "Anyone working on a farm for two weeks prior to the election can vote," Sherman says.

Amy Courtney works in the office at Swanton Berry Farm, which was unionized in 1996. Courtney says the union has improved the lot of the farm workers.[39] "The most concrete way the union has contributed is that the wages are higher," Courtney says. Today the wages start at $7.25, fifty cents above minimum wage, and go up to $12. In addition, the workers now have medical and dental benefits, which they didn't have before.

Money's Mushrooms has been unionized with the UFW representing workers since 1975. Rick Salgado, a human resources assistant at the farm, says the wages there start at $8.01.[40] The farm employs 330 people and Salgado says workers—the vast majority of which are Mexican—line up at the gates to get tickets for the hiring lottery every year.

The UFW now has standing as a member union in the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO). Rosenberg, the agricultural labor specialist, says the AFL-CIO was not always inclined to work with farm workers and opposed immigration on the grounds of supply and demand concerns, arguing that more workers equaled lowered wages. "The AFL was at best indifferent to what was going on in agriculture," Rosenberg says.

That position has shifted, due in part, Rosenberg says, to efforts of UFW's new president, Arturo Rodriguez. "[The AFL-CIO] has adopted a national strategy of putting organization of immigrants, naturally including agricultural employees, as a very high priority."

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[39] Interviews, Amy Courtney, conducted October-December 2001.
[40] Interviews, Rick Salgado, conducted October-December 2001.

A Shift in Focus after 9/11

There seem to be few areas of society that were not in some way affected by the events of September 11, and immigration policy is certainly no exception. The bills presented before the Senate and House by Senators Kennedy and Craig and Congressmen Berman and Cannon have been accompanied by bills like the CLEAR Act, introduced in July 2003. The CLEAR Act (Clear Law Enforcement for Criminal Alien Removal Act), H.R. 2671, was sponsored by Representative Charles Norwood, R-GA and was written in response to the recommendations of the 9/11 Commission in its July 2004 report. Its purpose is to use the expertise and man-power of local law enforcement officers to aid counter-terrorism efforts by requiring local police to help enforce immigration law.

Some groups, including the National Immigration Forum, argue that the bill will discourage immigrant victims from seeking needed police assistance in cases of domestic violence and other crime. These groups say the bill goes against the spirit of the Sept. 11 report, which stated: "Our borders and immigration system, including law enforcement, ought to send a message of welcome, tolerance, and justice to members of immigrant communities in the United States and in their countries of origin...Good immigration services are one way of doing so that is valuable in every way including intelligence." The proponents of the bill say these claims are unfounded and say the bill is necessary to coordinating and strengthening homeland security.

Whispering for Help

Juanita Martinez* had been bleeding for twelve days. Martinez, a beautiful woman with long silky hair, lives on the farm with Emilio and Antonio's nephew, Pablo Diaz*. Martinez, who is 16, gave birth to Pablo Diaz's son Daniel when she was 14 years old.

On the thirteenth day, Martinez went to take her shower. The shower on the farm is part of the shed, separated from the tool room by a shingled partition. A florescent outdoor patio light attached to one of the rafters sheds a dull pallor over the dank space. Martinez undressed Daniel and washed him and then herself, noticing that the bleeding had still not stopped.

When Martinez saw that Anna Morello*, Sam Hammond's girlfriend who worked at a health care clinic, had come to the farm to drop off Hammond, Martinez approached her and quietly explained her problem. Morello referred Martinez to a clinic nearby and told her how to get there by bus.

Martinez and Diaz, like most Mexican farm worker families, do not have health insurance. Martinez, who came across the border in the line with false papers, is an illegal resident, as is Diaz. There is an option in Diaz's wage plan with XYZ to deduct a monthly amount for medical insurance but, like most farm workers, Diaz chose to wave his insurance option. Collins, XYZ's board president and longtime farm manager, says he has tried to encourage his workers to utilize the health insurance option.

"Originally we had two people, Jorge and Pablo, but they didn't stay with it because the reality is they don't feel comfortable…taking part in any formal system," Collins said.

The clinic where Anna Morello worked has a large number of Mexican migrant worker patients. Morello says there were people coming in all the time without insurance.[41] The health care fees are often extremely burdensome for people making little more than minimum wage. "The [fee] without insurance to just get seen is $50 to $80," Morello says. "If they then have to go to a pharmacy for medication, who knows how much that could be."

[41] Interviews, conducted April 2002.

Jorge Ines*, a 58 year-old unauthorized worker who lives with Diego Velez, was diagnosed with diabetes two years ago. Because he is afraid a paper trail might lead to his deportation, he does not have health insurance and spends $400 a month on medication.

The doctors, Morello explained, do their best to help their patients. Some dispense doses of sample medications they get from pharmaceutical companies for free. The workers hear through word of mouth about the clinics where the doctors and nurses speak Spanish and won't ask questions. Morello says she could often tell when the papers and identifications were false. "It happens a lot," Morello explains. "But you learn to treat everyone as an individual and take what they say as the truth. You're there to help them with their health care needs and that's your only job."

Failed Attempts

Jim McCann is the office and personnel manager of XYZ Organics. McCann, who speaks only a few words of Spanish, comes down to the ring of trailers where the workers live every few months to look around and make sure that everything is working. On one of these occasions McCann discovered that the hot water heater was broken; the men had gone for six months without hot water rather than ask McCann to fix it. There is palpable discomfort in the air when McCann appears in the worker's quarters. Conversations stop so that the only noise is the television studio laughter from one of the many game shows the men like to watch while they eat during their lunch break from 12:00 to 1:00.

McCann says "Buenos Dias" in a gringo accent. The men respond with the same words. McCann motions to the surrounding structures and says in English that he is just going to look around to make sure everything is in order. The men nod. Some understood a portion of what he said; most did not. But they nod anyway.

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In early 2001, XYZ hired Norma Negrete, an immigration consultant, to advise their unauthorized workers about a new program, instituted that same year, to allow illegal workers to apply for residency while still in the US. The Legal Immigration Family Equity (LIFE) Act was signed into law by president Clinton on December 20, 2000.

The brothers Antonio, Gabriel and Emilio Diaz, all legal permanent residents of the US, did not attend the meeting McCann set up with Negrete. The 2000 NAWS reported that in 1998, 48 percent of California farm workers had real permanent residency authorization. Rosenburg says the percentage today is surely smaller. Most of those with legal residency, like the Diaz brothers, gained their status under the Immigration Reform and Control Act of 1986 (IRCA), which offered two major programs through which to obtain legal resident status. First, the IRCA granted amnesty to illegal aliens who had entered the US before January 1, 1982 and allowed them to apply to the INS for legal status. Second, the Special Agricultural Workers (SAW) component of the IRCA allowed agricultural laborers who had worked for at least 90 days in the US between May 1, 1985 to May 1, 1986 to apply for legal resident status.[42] In the wake of the IRCA and SAW, the percentage of the California agricultural work force that was unauthorized dropped to 9 percent in 1990-91 before climbing back up to over 50 percent by the late-1990s, Rosenberg says.

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[42] US Citizenship and Immigration Services Regulations. http://uscis.gov/graphics/aboutus/history/eligibility.htm (accessed October 20, 2004).

Diego Velez went to the meeting with Negrete. Velez says he fell short of the 90-day work requirement in 1986 by seven days.

Negrete says the LIFE regulation led to a lot of confusion among the agricultural community, many of whom were led to believe by consultants that the new program was an amnesty program like the one in the IRCA in 1986. LIFE did not in fact grant amnesty; it only stipulated that instead of returning to their country of origin, illegal residents could apply for immigrant visas and/or labor certification while still living in the US by first paying a penalty of $1000 for illegal residence. Negrete says a lot of people paid consultants $2000 in fees, only to find their application rejected, or the consultant office shut down when they went back a month later.

McCann and his assistant Susan Page* attended the meeting Negrete had with a group of the undocumented workers at XYZ, which was held in Spanish. "My understanding was that the program was possible," Page says, "but that it was a risk and that it was expensive." The men with whom Negrete met decided against applying for legal status through the new program.

The laws since that time have continued to hold legal status out of reach of the workers at XYZ. If the pending AgJOBS bill were passed, the men and women at XYZ would have a chance to finally gain the legal status they crave.

Tres Meses en el Cielo

In about the middle of June, Diego Velez begins counting down the days. Each passing week is a week closer to his "tres meses en el cielo"—three months in heaven—that he spends with his family between November and March. The men at XYZ get tired of sleeping alone, tired of getting up early six days a week, tired of brushing their teeth with a bottle of water. More than anything, though, Velez just misses his family.

"At home," Velez says, "my daughter comes up to me and puts her arm around my neck and kisses me on the cheek. 'Papi,' she says. And here, nothing. Nobody."

Velez has left XYZ early a few times, returning home to Mexico before autumn comes to California. "Diego is such a sweetheart," Collins says of his employee. "He gets very lonely. He would bail out early, and it was too bad for the farm, but we understand of course."

Collins says he hopes some day all the families will live at XYZ in straw bale cottages. He says it's made him happy to have the two families currently living there.

But the dreams of the workers are a little different. All of the unauthorized workers say they would like to have paperwork that enables them to cross the border legally to work. Then they would also be able to visit their families during the year. Emilio Diaz says he would like to be able to make enough money on his farm in Mexico so he doesn't have to come to the US Velez has already spent a cumulative $15,000 on building himself a house in Mexico. He would like to live there all year round.

This year, Velez stuck it out in California until November, returning home on the 29th with most of the XYZ crew. The day they leave California is a day full of anticipation for the men at XYZ. They pack small suitcases, leaving some of their belongings on the farm for their return next spring. They are thinking of the time they will get to spend with their loved ones back in Mexico, catching up on the year's events in conversations that are impossible using prepaid phone cards on public telephones.

Diego Velez takes down his sombrero from the hook by the door. He is wearing his Sunday clothes, a striped black and red shirt and black jeans. He wants to look nice when he sees

his family. He puts the faded black hat on his head and closes the wooden door, picks up his bag, and walks up the hill without looking back.